

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

FACSIMILE

(202) 955-9792

www.kelleydrye.com

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April 5, 2002

VIA ELECTRONIC SYSTEM AND HAND DELIVERY

William F. Caton, Acting Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554


**Re: Review of the Section 251 Unbundling Obligations of Incumbent
Local Exchange Carriers, CC Docket Nos. 01-338, 96-98, and 98-147**

Dear Mr. Caton:

Enclosed for filing with the Commission in the above-referenced proceeding are an original and eight (8) copies of the comments of Dynegy Global Communications, Inc. These comments are being filed electronically in conformity with the Commission's Notice of Proposed Rulemaking in this docket.

Please date-stamp the enclosed duplicate and return it to the courier. If you have any questions, please do not hesitate to contact me at 202-955-9774.

Respectfully submitted,



Darius B. Withers

cc: Service List
 Qualex International

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of
Review of the Section 251 Unbundling
Obligations of Incumbent Local Exchange
Carriers

CC Docket No. 01-338

Implementation of the Local Competition
Provisions of the Telecommunications Act
of 1996

CC Docket No. 96-98

Deployment of Wireline Services Offering
Advanced Telecommunications Capability

CC Docket No. 98-147

COMMENTS OF DYNEGY GLOBAL COMMUNICATIONS INC.

Dynegy Global Communications Inc. (“Dynegy”), by its attorneys, hereby submits its comments in the above captioned proceeding concerning the request by the Federal Communications Commission (“FCC” or “Commission”) for comments concerning its review of the Section 251 unbundling obligations of Incumbent Local Exchange Carriers (“Triennial Review NPRM”).¹ Dynegy submits these comments in support of the joint comments of NuVox, KMC Telecom, e.spire, TDS Metrocom, MFN and SNiP LiNK (“Joint Commenters”).

I. INTRODUCTION

Dynegy is a subsidiary of Dynegy Inc., a Fortune 100 company and leading provider of energy and communications services and products in North America, continental Europe and the United Kingdom. For the year ending December 31, 2001, the revenues of

Dynegy Inc. rose 43.5% to \$42.2 billion, reflecting the company's strong performance in energy convergence operations. Dynegy Inc., through its assets and subsidiaries, has long been a forerunner in the development of competitive energy markets. The success and experience of Dynegy Inc. in the deregulated energy sector, which underwent transitions similar to what the telecommunications industry is now undergoing, positions Dynegy as a leader in the developing market for high capacity telecommunications transport.

Dynegy is committed to developing a "state-of-the-art" facilities-based national and international data communications network and has already devoted significant capital and resources toward this end. On the continent of Europe, Dynegy obtained and is now upgrading more than 10,000 kilometers of fiber optic network capacity with advanced optical switching equipment and related technology. Today, Dynegy's European network reaches more than 22 cities in seven countries and features more than thirty strategically positioned collocation, data center and hub sites throughout Europe. Dynegy's U.S. and European long-haul networks are linked via a transatlantic connection between London and New York.

In the United States, Dynegy completed construction of its nationwide, optically switched, mesh network on time and under budget in September 2001.² This network provides Dynegy's customers some of the most competitive offerings in the industry, based on price, reliability, speed and flexibility. The Dynegy network spans more than 16,000 route-miles and reaches forty-four of the largest cities in the United States. Dynegy's innovative network is the

¹ On December 20, 2001, the Commission released a Notice of Proposed Rulemaking in the Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers ("Triennial Review NPRM"). See 67 Fed Reg. 1947 (Jan. 15, 2002).

² A mesh network is a network that provides a direct connection between each site and every other site. In this type of network, each transmission might be routed over an alternative path should the primary (direct) path between the two sites be either congested or in a state of failure. *Newton's Telecom Dictionary*, 16th Edition.

first to include Tellium optical switches and to deploy top-of-the-line Fujitsu dense wave dimension multiplexing (“DWDM”) optical equipment in a full-scale network build out.³ Dynegy’s network can transport OC-x services of up to 10 gigabits of data per second.⁴ The network’s mesh architecture provides a superior method to manage and route Internet traffic, and allows the company to satisfy today’s customers’ continued demand for additional bandwidth capacity.

II. THE BENEFITS OF UNBUNDLING TO COMPETITION

Dynegy’s customer base for its network consists primarily of other carriers, including Application Service Providers (“ASPs”), Internet Service Providers (“ISPs”) and large enterprise customers who demand reliable and robust networks. Critical to Dynegy’s ability to serve these customers, therefore, is the preservation of Unbundled Network Element (“UNE”) high-capacity loop and transport facilities.

For example, Dynegy is currently extending its network to metro distribution facilities in 18 metropolitan areas and major cities. Through strategic partnerships with various local service providers, Dynegy will be able to provide its customers with multiple pathing solutions between and within metro areas to give them access to most major suppliers and consumers of wholesale bandwidth. Dynegy’s vision of providing advanced broadband services to its enterprise customers is dependent, of course, on the ability of its local service partners being able to secure network elements and being able to offer local connectivity (last mile and intra-city transmission) to other providers at competitive prices.

³ The introduction of DWDM has enabled carriers to dramatically increase the data carrying capacity of an existing fiber optic network at minimal additional cost by separating the light signal into narrower and narrower frequency bands of light, each frequency carrying a separate signal operating as though it were a separate light pipe currently supporting as much as OC-192 transmission capacity (9.953 Gbps).

Although the cornerstone of a competitive market for access to these services is the preservation of open networks, without consistent, reliable, and competitively priced access to local last mile and intra-city transmission facilities, Dynegy effectively will be prevented from offering its customers access to many broadband services. Dynegy's integrated approach to communications and information infrastructure depends on the regulatory certainty that the Commission will continue to require incumbent local exchange carriers ("ILECs") to unbundle their network facilities. The maintenance and expansion of CLEC access to UNEs increases the range of competitive alternatives available to all carriers, regardless of their mode of competitive entry, and offers long-haul and high capacity carriers the opportunity to select among potential partners (CLECs *and* ILECs) to offer services to other carriers and enterprise customers. Dynegy, therefore, supports the submission of the Joint Commenters in this proceeding which urges the Commission to preserve access to critically important high-capacity loops and UNE transport facilities.

III. DISCUSSION OF SPECIFIC ISSUES

In addition to its support of the position of the Joint Commenters, Dynegy has identified particular issues which illustrate the importance of ensuring the continued access and preservation of UNEs in general, and high capacity loops in particular. These issues are addressed as follows.

1. Unbundling Encourages Competitive Entry and Investment.

First, Dynegy believes that no changes are necessary to the basic rules which require ILECs to unbundle interoffice transmission facilities. In fact, if the Commission

⁴ Dynegy's network can carry 176 DWDM wavelengths. Each wavelength is equivalent to an OC-192, which can carry 129,024 calls at one time.

maintains the requirement that ILECs allow access to the same list of unbundled elements as exist currently, such a requirement will continue to spur entry by a number of new participants in the telecommunications market and promote overall competition. Despite allegations by ILECs, there exists no sound evidence to support claims that regulated rates for unbundled network elements create disincentives for the deployment of advanced network facilities. An ILEC's ability to recuperate its costs under the standards of the Act have not been served as a disincentive to all ILECs' investment in network infrastructure. On the contrary, a review of the largest ILEC's 10K shows that ILEC capital expenditure on network infrastructure for the purpose of deploying high capacity services increased at a record pace since the 1996 Act.⁵ This investment was spurred by a need to compete with the tremendous capital infusion that fueled the entry of many competitive carriers into the marketplace.

2. A Granular Approach to Identifying UNEs is Flawed.

Second, Dynegy does not believe that a granular approach to identifying UNEs would bring any benefits to competition and would add a level of regulatory complexity that would hinder competitive entry. While it is undeniable that the communications services market has undergone rapid change since the passage of the 1996 Act and the implementation of the Commission's local competition rules, there is no evidence that competition has irreversibly taken hold to justify elimination of the current list of UNEs. On the contrary, the changes in the market point to the opposite conclusion—that competition is still at its early stages and can

⁵ For example, Verizon, in its Form 10-K submission to the Securities and Exchange Commission for the year ending December 31, 2001, noted that it made "significant capital expenditures to meet the demand for communications services and to further improve such services" citing investments of approximately \$11.5 billion in 2001, \$12.1 billion in 2000 and \$10.1 billion in 1999. *See* Verizon SEC Form 10-K, filed March 20, 2002 (www.sec.gov/Archives/edgar/data/732712/000095010902001438/0000950109-02-001438-index.htm).

easily be snuffed out. In particular, competition among providers of the “last-mile” network – the aforementioned local metro backbone – has progressed at an incremental pace, with fits and starts. Due to shrinking access to the capital markets for new entrants, opportunities for diverse facilities-based deployment has declined precipitously. Dynegy has found over the course of the last year that the number of competitive options it has to lease last mile facilities from have become fewer over time, not greater. Thus, Dynegy strongly urges the Commission to refrain from acting on certain proposals outlined in the *Triennial Review NPRM* that would reverse the progress toward a competitive market for telecommunications services. In particular, the Commission need not apply a more refined or granular impairment analysis to certain capacity level loop and transport UNEs. There exists no basis to deviate from the Commission’s current standard or to eliminate any of the high capacity transmission UNEs. The Commission must preserve non-discriminatory competitive access to these critical network elements.

3. Dynegy’s Facilities Based Entry Depends on the Continued Availability of UNEs to CLECs.

Finally, the Commission must consider seriously the impact of proposals offered by ILECs which would diminish competitive choice for local network access. As discussed above, Dynegy has established a nationwide optical mesh network, which is capable of supporting a myriad of broadband services in the telecommunications marketplace. Dynegy is committed further to continuing to build-out a reliable “next generation” long haul network, which includes the creation of a local distribution network able to deliver information services between various points within specific metro areas. As such, Dynegy is committed – fully – to the control and management of its own network facilities.

Dynegy’s vast experience in the energy markets have revealed, however, that although an “asset backed” strategy is central to the successful participation in the

telecommunications market, an “asset smart” strategy is equally important. Carriers that deploy facilities strategically, where service considerations require and capital markets will allow, understand that it must supplement its network through interconnection and access based upon the costs of an incumbent providers’ facilities. In the instant context, it is only through preservation of access to UNEs that the Commission will ensure the continued development of a competitive market for communications services.

Absent the development of a truly competitive market for local metro network access, Dynegy will be forced to rely solely upon ILECs for termination and origination services in local markets – thereby raising prices for its customers and reducing the rapid deployment of advanced competitive services.

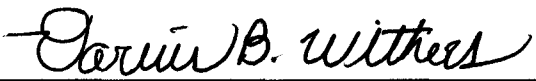
IV. CONCLUSION

At bottom, the Commission must make a choice. Either the Commission can reject the suggestions and proposals of the Joint Commenters and allow ILECs to strip CLECs of access to essential network facilities at reasonable terms and conditions; or the Commission can embrace Congress’ call for competition as outlined by the language of the statute. For all of the reasons outlined above, the Commission should preserve, and to the degree necessary as noted

by the Joint Commenters, clarify, the findings and conclusions of its *UNE Remand Order* to ensure continued access to ILEC unbundled network elements.

Respectfully submitted,

DYNEGY GLOBAL COMMUNICATIONS, INC.

By: 

Steven A. Augustino
Darius B. Withers
KELLEY DRYE & WARREN LLP
1200 19th Street, N.W., Suite 500
Washington, DC 20036-2423
(202) 955-9600

Its Attorneys

April 5, 2002

CERTIFICATE OF SERVICE

I, Patricia A. Bell, hereby certify that I have caused a copy of the foregoing
“Comments of Dynegy Global Communications Inc.,” in CC Docket Nos. 01-338, 96-98 and
98-147, to be served this 5th day of April 2002, via hand delivery, upon the following:

Michael K. Powell, Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Kathleen Q. Abernathy, Commissioner
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Michael J. Copps, Commissioner
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

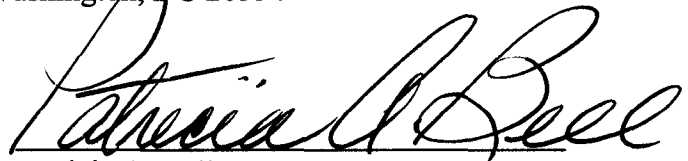
Kevin J. Martin, Commissioner
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Kyle D. Dixon, Legal Advisor
Chairman Michael K. Powell
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Bryan Tramont, Sr. Legal Advisor
Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Jordan Goldstein, Sr. Legal Advisor
Commissioner Michael J. Copps
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Daniel Gonzalez, Sr. Legal Advisor
Commissioner Kevin J. Martin
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554



Patricia A. Bell